

**THE COMMON COUNCIL OF THE CIVIL CITY OF NEW ALBANY,
INDIANA, WILL HOLD A REGULAR COUNCIL MEETING IN THE THIRD
FLOOR ASSEMBLY ROOM OF THE CITY/COUNTY BUILDING ON
THURSDAY, MAY 15, 2008 AT 7:30 P.M.**

The meeting of the **New Albany City Council** was called to order by President Jeff Gahan at 7:31 p.m. The meeting opened with the Lords Prayer and the Pledge of Allegiance.

MEMBERS PRESENT: Council Members Mr. Coffey, Mr. Caesar, Mr. Price, Mr. McLaughlin, Mr. Gonder, Mr. Messer, Mr. Zurschmiede and President Jeff Gahan. Mrs. Benedetti was absent.

OTHERS: Council Attorney Jerry Ulrich and City Clerk Marcey Wisman.

ALSO: Deputy Mayor Carl Malysz, John Rosenbarger and Scott Wood.

APPROVAL OR CORRECTION OF THE FOLLOWING MINUTES:

Mr. Caesar moved to approve the work session minutes from April 17th, Mr. Coffey second, all voted in favor.

Mr. Coffey moved to approve the work session minutes from May 5th, Mr. Messer second, all voted in favor.

Mr. Messer moved to approve the public hearing minutes from May 5th, Mr. Price second, all voted in favor.

Mr. McLaughlin moved to approve the regular meeting minutes from May 5th, Mr. Gonder second, all voted in favor.

COMMUNICATIONS – PUBLIC:

Gary Whacker, Mt. Tabor Road, again spoke against the zoning change for Go for Less. He stated again that if he cannot move into this area that it will not put him out of business. He stated that this is his livelihood and he will find a commercial area to move into.

Debbie Whacker, Mt. Tabor Road, also spoke out against the zoning change for Go for Less. She stated that she does not want to put Jack out of business and she doesn't believe that he will be because there are so many places in New Albany that he could put his business in and she just doesn't want to live next to a pawn shop and doesn't believe it is in the best interest of her community.

Annie Savino, Faucet Hill, spoke on Z-08-07 regarding Summit Hill, stated that at the last meeting she was really surprised that no one asked any questions of the developers regarding this project. She explained that she hoped that they have all researched this project and knows what they are voting on because this is such a large project going into a geographically sensitive area.

Mr. Coffey assured Mrs. Savino that the council members are all informed on this project and the company has bent over backwards to make concessions to get it passed.

Mr. Price stated that he would like to echo what Mr. Coffey said and stated that it might be a little new to some of the newer council members but they are all informed.

Mr. Savino, Faucet Hill, spoke on Z-08-07, stated that they are happy that the commercial portion will be close to State Street and the only concern he has is about a new condominium directly across from a 1930's cabin.

Mark Kassidy, spoke regarding Z-08-02, stated that at the last meeting Mr. Roudenbush correctly pointed out that the council is the body that these types of issues to go to for the

last vote but what was left unsaid was that there has to be a good reason to over turn the vote. He explained that he has been here for all the meetings regarding this development and he has heard no good arguments for turning over the vote of the plan commission. He stated that he has heard for a year now from the council about how there is so little industrial space in New Albany and if they put a retail place in there they will have to overturn the zoning. He stated that Jack is a good man with a good head on his shoulders but he is just asking the council to take a long term view on this.

Mr. Price moved to amend the agenda to move the CF-1's forward, Mr. Messer second, all voted in favor.

APPROVAL OF CF-1 FORMS:

Padgett, Inc., Compliance with Statement
of Benefits, Referencing R-98-05, R-02-25, R-02-26,
R-02-27 and R-05-35

Mr. Messer moved to approve, Mr. Caesar second, all voted in favor.

Retailers Supply Co., Inc, Compliance with Statement
of Benefits, Referencing R-04-33

Mr. Messer moved to approve, Mr. Price second, all voted in favor.

Shireman-UHL Properties, LLC, Compliance with
Statement of Benefits, Referencing R-04-22

Mr. Coffey moved to approve, Mr. Zurschmiede second, all voted in favor.

Joseph & Teresa Zeller, Compliance with Statement
of Benefits, Referencing R-99-34

Mr. Messer moved to approve, Mr. Zurschmiede second, all voted in favor.

Hitachi Cable Indiana, Inc., Compliance with Statement
of Benefits, Referencing R-06-36, R-05-46, R-05-47 and
R-07-26

Tabled call for contact info.

COMMUNICATIONS – CITY OFFICIALS:

Mr. Caesar addressed the issue of Matt Denison who was removed from the position of President of the Board of Public Works and he is not sure why. He stated that a number of the council members have used Mr. Denison as a resource because he is energetic, responsive and is a great go-to guy and they would like to see him continue in a position of authority with the administration

Mr. Coffey stated that he would second what Mr. Caesar just said.

Mr. Zurschmiede stated that Mr. Denison has helped him a lot with different issues and just like Mr. Caesar said he is enthusiastic and always ready to do the best job he can for the City.

Mr. Gahan stated that he agrees and that anytime he has had a problem Mr. Denison has been very helpful.

Mr. Messer gave a report from the redistricting committee and stated that they are ready to present their plan to the community and the council on the 28th. He asked Ms. Wisman to check and see if the assembly room is available on that date and extended an invitation to the council to come see their proposal.

Mr. Malysz stated that he feels the same about Matt Denison as they do and they should continue to call him for assistance because they expect him to continue in the same capacity as a City employee to solve community problems. He stated that the Mayor asked that he serve in that capacity and that was all there was to it.

Mr. Coffey asked if the Mayor explained the reasoning behind the change and if they felt that Mr. Denison was doing a good job.

Mr. Malysz stated that he did not explain to him why there was a change and they all thought Mr. Denison was doing a great job. He stated that there is a resolution on the agenda that comes from Redevelopment for the 2008 one-year action plan. He explained that he was contacted by a reporter about a document that was included in the packets by accident which was more or less a drafted wish list of projects that the administration had been discussing with Redevelopment. He stated that this list had no bearing on any item on the agenda tonight and if they had any questions about it feel free to ask. He stated that at the last meeting they saw Ordinance G-08-07 concerning public and private agreements and he wanted to let them know that they are fully behind this ordinance.

Mr. Coffey stated that because of the laws that were passed by the legislation there were a lot of changes and they would like to have a work session on May 27, 5:00 p.m. to discuss what the role the role of the Redevelopment Commission is and what new role the council will play in this. He asked Ms. Wisman to see if she could check on the availability of the assembly room.

COMMUNICATIONS – MAYOR

APPOINTMENTS:

INTRODUCTION OF ORDINANCES AND RESOLUTIONS: READING

R-08-22	Resolution of the Common Council of the City Of New Albany to Adopt and Authorize Submission Of the CDBG FY2008 One-year Action Plan	Coffey
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Mr. Coffey stated that as he just pointed out they are going to have a discussion on the changes in the redevelopment and the powers that are going to be transferred. He stated that he would like to table this until the June 2nd meeting and he would also like to have a work session on this resolution prior to the next council meeting.

Tabled

Z-08-09	An Ordinance For the Vacation of an Existing Utility Easement Pursuant to a Petition Filed by Vincent Ira Harshey	Caesar 1
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Mr. Caesar moved for the first reading of Z-08-09, Mr. Messer second, all voted in favor.

Ms. Wisman stated that she sent letters to the utilities and received no response from anyone.

G-08-04	An Ordinance Amending the New Albany Municipal Code by Adding New Section 94.30; providing for Restrictions on Novelty Lighters	Benedetti 2&3
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Mr. Gahan stated that he spoke with Mrs. Benedetti who could not be here tonight and asked that this be tabled for the night.

Tabled

G-08-07	An Ordinance Concerning Public and Private	McLaughlin 2&3
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Agreements

Mr. McLaughlin moved for the second and third reading of G-08-07, Mr. Price second, all voted in favor. Bill G-08-07 became ordinance G-08-15.

G-08-08	An Ordinance to Amend Fees for Property Tax Abatements	Price 2&3
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Mr. Price stated that this is a step in the right direction to hold businesses accountable in paying their fair share.

Mr. Gahan stated that the committee did a good job of getting that in and turned around quickly.

Mr. Price moved for the second and third reading of G-08-08, Mr. Messer second, all voted in favor. Bill G-08-08 became ordinance G-08-16.

Z-08-05	An Ordinance For the Vacation of An Existing Utility Easement pursuant to a Petition Filed By Hickoryvale Mini Storage, LLC	Messer 2&3
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Mr. Messer moved for the second and third reading of Z-08-05, Mr. Coffey second, all voted in favor except for Mr. Zurschmiede who abstained. Bill Z-08-05 became ordinance Z-08-17.

Mr. Zurschmiede stated that for the record he is part owner and he will abstain from voting for this item.

Z-08-07	Ordinance Amending the Code of Ordinances of New Albany, Indiana, Title XV, Chapter 156, (Docket P-09-08: Eagle Development)	Zurschmiede 2&3
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Mr. Zurschmiede moved for the second and third reading of Z-08-07, Mr. Messer second, all voted in favor. Bill Z-08-07 became ordinance Z-08-18.

Mr. Gonder asked if the developer had any thing to say regarding what Mr. & Mrs. Savino talked about at the beginning of the meeting.

Mr. Rich Hearth with Eagle Development stated that they have reduced the number of units from 12 to 10 and they will take a look at it to see what they can do to pull it further from the existing residence.

Z-08-02	Ordinance Amending the Code of Ordinances of New Albany, Indiana, Title XV, Chapter 156 (Docket P-01-08: Go for Less, LLC)	Price 3
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Mr. Price moved for the third reading of Z-08-02, Mr. Messer second, the ordinance failed with all members voting no except for Mr. Price, Mr. McLaughlin and Mr. Messer.

Mr. Price asked if they would mind letting Mr. Neville speak to the council regarding this.

Mr. Naville asked that they keep in mind that his client came in to discuss this with the Plan Commission he was told that there would be no problem, but then when he came back to pay the fees and pick up his signs he was told that they didn't know if the staff could approve the PUD. He stated that at the Plan Commission hearing in February the first vote was 5-3 in favor of the docket but because of voting procedure it had to have 6 votes and on the second vote it was turned down. He stated that the when it came in front of the council it was turned down by a 5-4 vote the first time showing how close it is. He stated that a lot across the street from this one that is four times as large was zoned residential and it was said at the time that it doesn't seem like there is much of a market

for small industrial properties and with Mr. Dykes being even smaller he doesn't see how they are going to attract an industrial on that parcel of land. He stated that the strip of land they are talking about in the park that is zone industrial hasn't been developed for industrial in 25 years but rather they have small pockets that are industrial in nature. He stated that zoning on this is not changing they are just under the Planned Unit Development which means it is zoned as its own district with a special zoning but the underlying zoning doesn't change. He stated that Mr. Dyke's business is governed by the Indiana Banking Commission which is the same one that regulates all the banks. He asked the council how they are supposed to deal with the mindset of them feeling like they have to go along with the Plan Commission. He stated that if that is their attitude and they are just going to basically rubber stamp anything that comes from the Plan Commission then they aren't doing their jobs and they aren't needed and bringing these zoning ordinances in front of them is unnecessary. He stated that the only voice that a guy like Mr. Dykes has is through the elected council members, and yes there are other lots available in the City of New Albany but he doesn't have a ton of money to go out and purchase a new one.

Mr. Wood explained that a PUD is not an over-lay zone change. He explained that the I1-C goes away if they rezone this as a PUD and the only use that would be permitted there if he goes out of business would be a pawn shop unless there were further zone changes.

Mr. Messer asked if it could be rezoned back to light industrial.

Mr. Wood said that it would be up to the council. He explained that the staff does have different opinions on things from time to time but that is what the Plan Commission is for. He expressed his disappointment that it is continually brought up that the Plan Commission made a hasty decision because a basketball game was on that night and assured them that was in fact not true. He stated that this business is simply just not appropriate at that location and the council should not permit this to go through just because there are already other zoning violations out there. He stated that the types of retail that is out there typically rely on very large volume of storage and if you permit those only in commercial districts you will suck the life right out of that commercial district because they will use all the space for warehouse and equipment. He stated that there were three zoning violations among 60 and one is more than likely a permitted use and the other two are going through a zone variance right now.

Mr. McLaughlin asked if a business is zoned commercial is there a certain amount of retail that goes with it.

Mr. Wood stated that it is basically an electrical contractor that sells lamps and security systems but it is a contract business and that is their primary function.

Mr. Messer asked what the status is on the beauty salon.

Mr. Wood stated that it is there illegally but they have applied for a land-use variance and they have an uphill battle and they have to show that there is something peculiar about that property that warrants a land use variance.

Mr. Messer asked if it would come back before them.

Mr. Wood said no that it would be exclusively for the Board of Zoning Appeals

Mr. Zurschmiede asked what a PED was.

Mr. Wood stated that a PED was a zone change which is complex because it is a both land use and a development plan so you are renewing and approving both.

Mr. Messer asked if Mr. Dyke's had applied for a land use variance he would have been ok.

Mr. Wood stated that he would still have to show that there was something peculiar about the land to warrant the variance.

Mr. Zurschmiede stated that they have had a lot of discussion regarding this and hopefully they have all been out there to see the area. He stated that there are definitely some commercial looking properties out there but two wrongs do not make a right. He stated that they shouldn't continue to allow businesses out there illegally just because there is some already out there. He explained that if this was about Mr. Dyke being an upstanding citizen there would be no question but that is not what this is about.

Mr. McLaughlin stated that he has been out there and some of the service businesses out there are more into retail than what they had discussed here and however they vote tonight they need to look into this.

Mr. Price stated that they need to be consistent and this is a lesson for the council as well as the plan commission. He stated that one of the biggest problems in New Albany is that some people get breaks and some don't and they talk amongst themselves and causes problems.

Mr. Coffey stated that he thinks that what Mr. Wood is trying to say is that this is not about the person or his credibility but about the zoning change.

Mr. Messer stated that it is disturbing to him why the City didn't buy that property instead of leaving those two residential properties there and now they are dealing with the consequences of this. He stated that it also bothers him that these neighbors come to fight the pawn shop but they didn't fight any other retail business that went in there and they don't get to choose what type of retail goes in if the zoning is granted. He stated that Mr. Dyke wouldn't even be in front of this council if he had chosen to just go in and establish his business but because he chose to go the correct route his is being punished.

Mr. Coffey stated that he probably should have went the other way because to him a land use variance would have been easier to pass than a PUD.

Theresa Palley, Lafayette Drive, stated that Mr. Taylor from EMC came out because they have water that is running into house and flooding yards. She stated that there are several houses in the area that have problems with yards and basements flooding and it makes doing simple things like mowing the lawn impossible. She stated that she came to the City regarding this issue numerous times last year and she thought she was told that they were going to take care of the problem.

Mr. Gahan stated that she is in his district and he would follow up with Mr. Taylor and get back to her.

Carl Malysz stated that the Storm Water Board is in the process of creating a master plan and this may be one of the many projects that they are trying to pull together in the overall plan. He stated that he will work with Ms. Wisman and make sure that this women's question goes back to the Storm Water Board.

Mr. Messer asked Mr. Malysz if he had heard anything about the engineer telling the storm water employees to no longer do any digging.

Mr. Malysz stated that he is not familiar with this but if they want him to research it he will.

Randy Smith addressed the board regarding the work that they did on redistricting and informed them that they will be having a meeting May 28th for the council to preview the plans. He stated that they would like to get as much input from the council and the public as possible on this.

Mr. Malysz spoke regarding R-08-22 he stated that they do work on a time schedule and HUD asked that they get this to them 45 days prior to the end of the fiscal year. He

stated that if there is any way that they could act on this so that they can keep on the current schedule he would certainly appreciate it but if there is some other reason why this is tabled could they let him know so he could help resolve whatever questions they have.

Mr. Coffey stated that after 8 years of always getting things to pass at the last minute or they will miss a deadline he is drawing the line. He asked if they hold off until the June 2nd meeting will this pose a problem.

Mr. Malysz stated that they will not meet the HUD 45 day requirement.

Mr. Coffey stated that they should have had this in earlier.

Mr. Malysz asked what that would make a difference because they act on these resolutions in one night and they have their packets well in advance to do the research. He stated that they had advertised public hearings and they went through the due process laid out so there is no last minute about this other than the 15th happens to be the deadline.

Mr. Coffey stated that other council members have expressed their unease with passing things that have been changed at the last minute and they don't know what the changes are.

Mr. Malysz stated that he is not sure what Mr. Coffey is talking about but if they have questions he would be more than happy to answer them or help them with any other issues they may have. He asked if the council could define what last minute is in the future so they can revise their schedule because they have never had this issue before so they were unaware of the problem.

Mr. Gonder asked what he meant when he said that it won't necessarily cause problems with Indianapolis if they do not get this in within the 45 days.

Mr. Malysz stated that they might get written up but it won't derail what is going on but they will explain to them that the new council has changed their notification needs. He explained that they are talking about a new procedure that they just weren't aware of and they will deal with it either way but they try to keep timely with the HUD deadlines and they had no clue that bringing this to the council tonight would cause any problems because when this was brought before the Redevelopment Commission Mr. Coffey never indicated that there was a problem.

Mr. Gahan stated that they will try to get this through as quickly as possible.

ADJOURN:

There being no further business to be heard, the meeting adjourned at 8:04 p.m.

Jeff Gahan, President
Common Council, City of New Albany

ATTEST: _____
Marcey Wisman, City Clerk